HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT PETITION No. 26135 OF 2005

Between:

Mohsin Bin Hussain Al-Kasary

... Petitioner

AND

The Archaeological Survey of India,
Hyderabad & others

... Respondents

:: O R D E R ::

Counsel for the petitioner : Shri Mohsin Bin Hussain Al-Kasary, Party-in-person

Counsel for respondent Nos.1 & 2 : Shri A. Satya Prasad, Special Government Pleader.

Counsel for respondent No.3 : Shri Md. Abdul Rafi

Dated: 22.03.2007

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Per C.V.Nagarjuna Reddy, J

The petitioner, who claims to be a social worker and interested in serving public, filed this writ petition for a writ of Mandamus to allow Namaz being performed in the mosque situated in the second floor of the Charminar monument with immediate effect.

In the affidavit filed in support of the writ petition, the petitioner averred that the monument Charminar was constructed 400 years ago i.e., in the year 1591 A.D. by the then ruler of Hyderabad by name his Highness Mohammed Quli Qutub Shah; that the area was infected with plague and the ruler of Golconda wished that he will construct a mosque if the people of Golconda was relieved of deadly disease; that accordingly the Charminar was constructed; that the monument as a mosque on the second floor even now and that persons from Muslim community were offering prayers from the date of construction of the monument continuously without any interruption whatsoever from any quarter.

It is further averred that once an unfortunate incident happened when five persons i.e., four sisters and their brother visiting Charminar as tourists, jumped from the top floor of the monument and that in the said incident three sisters and the brother died and since then public were not allowed to climb up

any of the floors of the Charminar by Archeological department. It is also pleaded that prior to the closer of the monument people used to visit the second floor and offer prayers; that the Madarsa was also being run in the said monument; that Charminar was being used as mosque on the second floor is clear from the fact that in the ground floor there is a fountain used for the purpose of cleaning hands and feet before offering prayers in the mosque. It is also stated that it is not permissible to keep a mosque idle and unattended to as per the holy scripture Quran.

The petitioner further stated that though a written representation to the then Chief Minister of Andhra Pradesh marking copies to the Minister for Archeology, the Director of Archeology and Musium, the Chairman, Andhra Pradesh Human Rights Commission etc., was sent on 23.01.2004, no action was taken to permit offering of prayers in the Charminar.

On behalf of the Archeological Survey of India, the 1st respondent, D. Jithendra Dass, Superintending Archeologist, Hyderabad Circle, filed a counter-affidavit. In paragraph 3 of the counter-affidavit, it is stated that the Charminar was built by Mohammed Quli Qutub Shah, the fifth ruler of the Qutub Shahi Dynasty of Golconda in 1591-92 A.D.; that many theories have been propounded for the purpose of which Charminar was originally built and that Charminar was completed in 1592 to commemorate cessation of an epidemic of plague. It is also stated that the annual report of the Archeological Department of his exalted highness Nizam's Dominions (1918-1919 A.D.) refers

to the existence of a belief that Charminar was constructed as a college due to the existence of apartments/cubicles for the use of students and professors.

In paragraph 4 of the counter-affidavit, it is stated that the Government of India declared the Charminar as a monument of ancient and historical importance under the Ancient and Historical Monuments and Archeological Sites and Remains (Declaration of National Importance) Act, 1951; that Rule 7 of the Ancient Monuments and Archeological Sites and Remains Rules, 1959 prohibits the use of protected monuments for the purpose of holding any meeting, reception, party, conference or entertainment unless written permission of Central Government is taken, though clause 2 of the said Rule exempts meetings etc., held in pursuance of religious practice from taking such permission. It is further stated that there is no record of the Charminar as being used for offering prayers at any time and that it was generally perceived that prayer halls were meant for the visitors to offer prayers if they happen to be in the building at the relevant time.

In paragraph 5 of the counter-affidavit, it is stated that till the year 1986 the monument was kept open for visitors and they were allowed to climb up to the second floor and that in the year 1986 an incident took place in which four members of a family jumped from the second floor of the monument and committed suicide and that the police investigation showed that the death resulted on account of suicide and the monument was kept closed for the public from 17.11.1986 to 06.02.2003 and from 07.02.2003

the monument was kept open to the visitors for climbing up to the first floor.

Heard Sri Mohsin Bin Hussain Al-Kasary, party-in-person, Sri A. Satya Prasad, Special Government Pleader for respondent Nos. 1 and 2 and Sri Md. Abdul Rafi, learned counsel for respondent No.3.

The petitioner-in-person submitted that since the existence of the mosque on the second floor of the monument is not specifically denied by respondent No.1, the prayer made in the writ petition deserves acceptance. During hearing, one of us (the Chief Justice) asked the petitioner whether there was any proof of prayers being offered prior to closer of the monument for public visits in the year 1986 as pleaded by him in paragraph 3 of the affidavit filed in support of the writ petition. He candidly admitted that he has no proof to support the said plea. As already noted, in the counter-affidavit filed on behalf of respondent No.1 it was specifically asserted that there is no record of Charminar having been used for offering prayers at any time. In the absence of any material produced by the petitioner to show that there was a religious practice of prayers being offered on the second floor of the monument, the whole premise on which the writ petition is founded falls to ground.

We are therefore of the view that the petitioner failed to establish any religious practice by which the Charminar was used for offering prayers or by not allowing public to offer prayers, any

of their legal or fundamental rights are violated. There is another reason for our disinclination to accept the prayer of the petitioner, namely, that the tourists/visitors are not allowed to climb up beyond first floor of the monument keeping in view the public safety, having regard to occurrence of the tragedy involving the death of four persons in the year 1986. If public access is permitted beyond the first floor, it may lead to repetition of such occurrences. We are therefore of the considered view that it would be against public interest if people are allowed to have access to the second floor in the name of offering prayers.

For the aforementioned reasons, we are not inclined to accept the prayer sought for in the writ petition and accordingly the same is dismissed.

C.V.NNAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 22.03.2007
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